

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. ) CRIMINAL CASE NO. CCB-17-106  
DANIEL THOMAS HERSL, )  
Defendant. )  
\_\_\_\_\_ )

Friday, June 22, 2018  
Courtroom 1A  
Baltimore, Maryland

BEFORE: THE HONORABLE CATHERINE C. BLAKE, JUDGE

MOTION FOR NEW TRIAL - SENTENCING

For the Plaintiff:

Leo J. Wise, Esquire  
Derek E. Hines, Esquire  
Assistant United States Attorneys

For the Defendant:

William Purpura, Jr., Esquire

Also Present:

Gina Swillo, U.S. Probation Officer  
Special Agent Kevin Bodmer, FBI

Reported by:

Douglas J. Zweizig, RDR, CRR  
Federal Official Court Reporter  
101 W. Lombard Street, 4th Floor  
Baltimore, Maryland 21201

*Douglas J. Zweizig, RDR, CRR - Federal Official Court Reporter*

1           **THE COURT:** -- mental health.

2           Is there anything specific by way of recommendation to  
3           the Bureau of Prisons that you would be looking for? I think  
4           designation of the facility is complex because of his prior  
5           employment, but --

6           **MR. PURPURA:** Actually, obviously, I hope -- and I  
7           spoke to the BOP, and hopefully they can do what's appropriate.  
8           I spoke to Mr. Hersl, and at first his thought would be that he  
9           wanted to be outside of the jurisdiction for safety purposes,  
10          but now I think he's changed that.

11          I'm going to ask the Court to recommend FCC at  
12          Fairton, New Jersey. But whatever the -- I'm sure whatever the  
13          BOP feels is appropriate in this particular case, they'll do.

14          **THE COURT:** Okay. All right. Thank you.

15          Anything else --

16          **MR. PURPURA:** Nothing. Thank you.

17          **THE COURT:** -- that anybody wants to be heard on?

18                       Conference at the bench.

19          (It is the policy of this court that every guilty plea and  
20          sentencing proceeding include a bench conference concerning  
21          whether the defendant is or is not cooperating.)

22          **THE COURT:** Okay. All right. As you've all heard me  
23          say before, and it doesn't change, sentencing is a very  
24          difficult process. There are many things that have to be  
25          considered in this case.

1 I'll start with the nature and circumstances of the  
2 offense and what are the harms caused by the conduct that the  
3 jury did find had been proved as to Mr. Hersl.

4 And, of course, there are harms to the individual  
5 victims whose money was taken. There was undoubtedly a  
6 wrongful use of official force. The gun and the badge enabled  
7 taking money, which, again, according to the jury's verdict,  
8 and I think the law, was a robbery; but whether it's robbery or  
9 theft, this was accomplished by the wrongful use of Mr. Hersl's  
10 police authority.

11 It is an abuse of the public trust. Officers take an  
12 oath to uphold the law. That gives them the right to have that  
13 gun and that badge so they can enforce the law, not break it.

14 And the harm that's done to what's already a level of  
15 distrust between many in our community and the police is only  
16 deepened by these kinds of proven crimes.

17 As has been referenced, the conduct of Mr. Hersl and  
18 others has resulted, it would appear, in the dismissal of  
19 probably hundreds -- or will result in the dismissal of  
20 probably hundreds of other criminal cases, some perhaps  
21 involving people wrongly convicted, some people who had, in  
22 fact, committed crimes, but those must be dismissed because the  
23 credibility of the officers on which the convictions rested has  
24 been destroyed.

25 The overtime fraud obviously took money from a city

1 that doesn't have any money to spare. And this overall conduct  
2 has, as I've said before, made more difficult the job of the  
3 majority of the men and women in uniform here in the city who  
4 face danger and hardship every day trying to protect the  
5 public, and they do that now in the face of this increased lack  
6 of trust.

7 And as I've said before, it strikes at the foundation  
8 of our entire criminal justice system if judges and juries  
9 can't rely on the word of sworn law enforcement officers  
10 because they're covering up their own crimes, whatever those  
11 crimes may be. Now, so we have very, very serious offenses  
12 here.

13 Obviously, I also need to consider the history and  
14 characteristics of Mr. Hersl. He's been a police officer for a  
15 long time. I don't doubt -- and as his brothers and others  
16 have said -- that he has put himself in harm's way in the  
17 course of that employment, that he has, in fact, protected  
18 others, saved lives, been involved in very stressful and  
19 disturbing situations.

20 I'm sure that he has been and continues to be,  
21 obviously, very loyal to his family, to his friends. I'm sure  
22 he's done good things for his community and appreciates the  
23 letters of support that have been offered for him and the  
24 people that are here for him today, and many of whom were  
25 present during the trial, of course. And I do take that all

1 into account, as I did with others.

2 The letters that have been presented, and in  
3 particular Mr. Hersl's letters, certainly show his pain, his  
4 faith, his love of family, and that he is -- obviously already  
5 has been and is being punished again. As is true for the other  
6 defendants in this case, it's reasonable to think that serving  
7 time in the Bureau of Prisons is -- it's difficult for anyone.  
8 It may be of particular difficulty for a former police officer.

9 On the other hand, to reflect the seriousness of the  
10 offense and promote respect for the law and provide just  
11 punishment, I again say there must be a significant period of  
12 incarceration.

13 I don't think there's an issue of specific deterrence  
14 or recidivism as to Mr. Hersl.

15 But this is clearly one of the cases in my career as a  
16 judge where the factor of general deterrence has great  
17 importance. There must be a clear message that officers who  
18 break their oaths by robbery, by fraud, by other crimes will be  
19 prosecuted and will be justly punished for that conduct.

20 Finally, there is the factor of relative culpability.  
21 Mr. Hersl was not a supervisor, was not a sergeant like two of  
22 the others that I have sentenced. He was a fairly senior  
23 member of the police force, but not a supervisor.

24 He apparently has committed a relatively similar  
25 number of robberies with Mr. Taylor.

1           There is some indication, there was some indication of  
2 drug involvement as to both Mr. Hersl and Mr. Taylor, but,  
3 frankly, nothing like the scale or the proof that was offered  
4 in regard to Sergeant Jenkins, who received the highest  
5 sentence in this case.

6           I balance -- yes, he was a more senior member than  
7 Mr. Taylor. I do note that to some degree, not in a guideline  
8 sense, I do believe there has been some acceptance of  
9 responsibility by Mr. Hersl.

10           And when I consider all those factors, I find that the  
11 sentence that was imposed on Former-Officer Taylor is the same  
12 sentence that is fair, reasonable, and just for Mr. Hersl, that  
13 is 18 years. That is 216 months in the custody of the Bureau  
14 of Prisons.

15           That is -- I will state that, and you'll tell me if  
16 there's any lawful legal objection to anything that I'm saying,  
17 but I believe it should be 18 years on Counts 1 and 2 and 5,  
18 concurrent, of course, with credit for time served.

19           That there would be a period of three years of  
20 supervised release, concurrent on each count to follow, with  
21 special conditions of participating in any alcohol abuse  
22 treatment program the probation officer recommends and any  
23 mental health counseling or treatment the probation officer  
24 recommends and providing financial information to the  
25 Probation Office.

1 In that regard, I'll just note briefly, again, we  
2 didn't discuss restitution, but is that the same --

3 **MR. WISE:** We're preparing a global restitution order  
4 which we'll be submitting -- circulate to counsel and be  
5 submitting after this sentencing and before the other -- I  
6 think the remaining sentencings.

7 **THE COURT:** The restitution will be deferred.

8 His financial circumstances don't permit a fine.

9 There is a required \$100 special assessment on each  
10 count. That's a total of \$300 that I will impose.

11 I'll certainly make the recommendation to the Bureau  
12 of Prisons that they consider a designation to FCI Fairton so  
13 he can be close to his family. That's, again, up to the Bureau  
14 of Prisons. And there are a lot of security issues to  
15 consider.

16 And have I left anything out? Anything I have not  
17 addressed? Any legal objection to that sentence or not  
18 covered?

19 **MR. WISE:** Not from the United States, Your Honor.

20 **MR. PURPURA:** Your Honor, I might have missed it,  
21 supervised release?

22 **MR. WISE:** Three years.

23 **MR. PURPURA:** Oh, she said that? Okay.

24 **THE COURT:** I'm sorry?

25 **MR. PURPURA:** I didn't -- I missed it. You mentioned

1 it, supervised release. There's nothing further.

2 **THE COURT:** Sure. Yes. Three years concurrent.

3 I have a note from our courtroom deputy. Counts 1 and  
4 2 of the original indictment?

5 **MR. WISE:** There was an original indictment. I don't  
6 recall if we dismiss after trial. I don't think we do in case  
7 there's an issue on appeal.

8 **THE COURT:** Because of the appeal?

9 **MR. WISE:** Right.

10 **THE COURT:** Okay. All right.

11 Mr. Hersl, obviously, as I'm sure you're aware, you do  
12 have a right to appeal, both from the result of the trial, the  
13 convictions, and from this sentence. You will consult with  
14 Mr. Purpura about that.

15 But any appeal would need to be noted within 14 days.

16 Do you understand that, sir?

17 **THE DEFENDANT:** Yes, Your Honor, I understand.

18 **MR. PURPURA:** Your Honor, just on that issue, the  
19 Court, based on a filing by Mr. Hersl, had found that Mr. Hersl  
20 presently does not have funds for counsel. And would that hold  
21 for the appeal? Because --

22 **THE COURT:** That, I believe, will be up to the  
23 Fourth Circuit.

24 **MR. PURPURA:** Fourth Circuit.

25 **THE COURT:** But if you note the appeal, it is up to